Res Publica
https://doi.org/10.1007/s11158-023-09653-9

Philip Pettit: *The State*

Princeton University Press, Princeton, 2023, 360 pp., ISBN: 9780691182209

Donald Bello Hutt[1] · **Victoria Kristan**[2]

Accepted: 21 December 2023

Why the state? Prominent answers to this question in Anglophone contractarian political theory tend to rely on prudential considerations. For Hobbes, for example, the state is necessary because subjects living in a condition of natural liberty face constant fear of death and find it impossible to lead predictable lives. As miserable as they may be under the power of the state, such condition is nothing 'compared with the miseries and horrible calamities that accompany' the state of nature ([1651] 1991, p. 129). So, you better consent to it. More recently, and in a similar vein, Robert Nozick avowed that we may accept the state 'as affectionately as a trip to the dentist' (1974, p. 5).

And why should we care about it? After all, we are nowadays constantly invited to acknowledge either that the days of the sovereign state are numbered or,[1] in any case, that they should be.[2]

In his latest book, Philip Pettit tries a different tack. He argues that the state is alive and kicking, that it emerges for reasons different than us contracting away our natural freedom, and for higher purposes then the ones suggested by Hobbes and others. For Pettit, the state emerges as the result of an evolutionary process that culminates in a form of political organisation with specific functions. Accordingly, the state and its ends are one and the same thing. It is, in Pettit terminology, *nomothetic*: it is an instrument for guaranteeing that those who rule and those who obey enjoy a rough balance of power, and for bringing about goods instrumental for obtaining justice. In turn, justice is understood as republicans conceive of the ideal of freedom.

[1] For example, Ankersmit (2007, p. 36), van Creveld (2009, pp. 336–414), Herzog (2020)
[2] For example, Foucault (2005, pp. 109–133).

✉ Donald Bello Hutt
donald.bello@uva.es

Victoria Kristan
victoria.kristan@pf.uni-lj.si

[1] Philosophy Department, University of Valladolid, Valladolid, Spain 47011

[2] Marie Skłodowska-Curie Eutopia SIF Fellow, University of Ljubljana, Ljubljana, Slovenia

Published online: 06 February 2024

Hence, the state is constituted by its role of making sure that individuals are not subject to the arbitrary will of others (p. 2).

The argument is in two parts, with three chapters in each. The first examines what the state is, its function, and how it must be organised to fulfil it (pp. 15–170). The second explores the normative potential of the modern state. It examines which elements must inform it and which obligations the state must meet for it to advance the cause of justice, the rights it must guarantee to 'the people' so that they may resist its exorbitant prerogatives, what rights individuals must hold for those purposes, and which role the state must play in regulating the operations of the contemporary economy (pp. 171–312).

To answer the first group of questions, chapter one elaborates a thought experiment—a genealogy that accounts for the emergence of the state. According to this emergent story, the existence of the modern state is explained not by recourse to a social contract, but through spontaneous social evolution. Inspired by Hart's genealogy explaining how legal systems develop (2012), the thought experiment begins by presenting readers with a hypothetical pre-social condition integrated by individuals who possess language and need protection and some degrees of cooperation to carry forward their own particular ends. In this scenario, these individuals would spontaneously (i.e., without social contracts) generate basic common rules such as thou shalt not steal, thou shalt not break your promises, thou shalt not kill, and so on. In time, these rules would turn into more sophisticated conventions, social norms, and laws, which would eventually be enacted and applied by entities we would typically recognise as state institutions. The methodology has an important consequence. It entails that the law pre-dates the state. Or, in Pettit's wording, '[t]he state will be a precipitate of such regime of law insofar as the operation of the regime entails the existence of a skeletal state' (p. 53).

Chapter two argues that in order to fulfil its function, the state must be organised as a corporation that speaks with one voice in dictating what 'the people' must do, so as to act as a representative of those living under its command, as well as a subject that can be recognised in the international sphere; as *a* person to whom one's gaze may be directed. It must do this in a way that changes in its government are not interpreted as changes in its identity.

Now, chapter three claims that the need for an agent speaking with a single voice does not entail that the nomothetic state must be a unitary one to fulfil its function. On the contrary, for Pettit, the cause of justice is better honoured when the state is decentralised and controlled by its citizens. The decentralised state should be polycentric, operating from different centres of political power. Power must be separated into its three traditional functions—legislative, executive, and judicial; it must be shared, for example through bicameral legislative systems; and it must be externalised to protect the people against political abuse. This can be done, for example, through the implementation of independent vigilators of those in government, as well as through impartial agencies controlling authorities where they would potentially have conflicts of interests. *Qua* decentralised corporation functionally oriented towards serving the cause of justice, the nomothetic state favours contemporary regimes such as the Australian parliamentary system and is less compatible with unitary polities such as the United States.

Moreover, realising justice demands that those who are affected by its commands can enjoy certain rights. The demand is twofold. First, the nomothetic state must grant rights and liberties to 'the people', so that the community may change its constitution or challenge its sovereign if it so chooses. This raises a problem. Given that the holder of such rights is 'the people', and that 'the people' challenging its sovereign is a product of the constitution, a question emerges of how can 'the people' challenge the very constitution to which it owes its existence. An influential absolutist argument affirms that 'the people' cannot exist outside the constitution, and that its actions are governed by constitutional rules. Accordingly, the agency of 'the people' hinges on the very rules that it tries to modify, as it were, from the outside. The upshot is infinite regress: 'the people' that challenges the constitution or the sovereign, can only do so either if it is constitutionally authorised to do so or if it holds sufficient power. A second problem is that if the absolutist criticism holds, then the only option left available for that resistance to obtain is through the unanimous collective action of every single individual comprised by 'the people'.

But surely this is unplausible. Considering these challenges, the fourth chapter elaborates an alternative explanation accounting for the right of 'the people' to resist the state from outside the constitution. Making use of his contributions to the literature on collective action and group agency, Pettit avows that in the same way that the creation of a corporative agent such as the state can be explained as the result of spontaneous, non-consciously coordinated action, so the collective resistance, criticism, and eventual replacement of the sovereign can take place in the absence of explicit constitutional authorisation or unanimity. A case in point is the American Constitution, which was ratified through procedures not regulated in the 1776 Articles of Confederation (pp. 173–224).

Second, the nomothetic state must grant rights not only to 'the people' but to the actual individuals subject to its commands. Against the background of this demand, the fifth chapter discusses whether the state is limited by individual rights. It examines the nature of those individual rights against natural-law theories which contend that rights pre-date the state and are thus pre-political. Pettit rebuffs this explanation on the grounds that it is extravagant and impractical and proposes an alternative. In line with the genealogical account championed in the book, he suggests that individual rights are 'institutional'. That is, that they come into being either as state concessions or as the sedimentation of continued useful social practices by which individuals give each other protected spaces of individual discretion. This, according to our author, is a better description of how we usually conceive of rights, and it explains why rights are constraints. It needs no recourse to extravagant stories about their supranatural origin, and it preserves the normative appeal it has, conceiving of them as individual entitlements on the one hand, and as limitations on the exercise of power on the other (pp. 225–263).

The book finishes by reflecting on the role of the state in the regulation of the contemporary economy. More specifically, it asks whether the demands of contemporary economy impose restrictions upon the state. Chapter six argues against the libertarian position that affirms that the market emerges and operates better in the absence of state intervention, and instead champions the view that both the market and today's economy not only make use of the state, but that their very existence

depends on the polity and on some of its characteristic institutions: property, money, and corporations. This is crucial for understanding that the state's intervention in the economy should not be interpreted as unwarranted interference, but as an actual manifestation of how the economy works (pp. 264–312).

The book is important, timely, and original. While the state has been the subject of numberless scholarly tracts and articles, Pettit is correct that 'there has been little work on the theory of the state *in the sense in which we pursue it here*' (p. 4. Our emphasis). He employs an original method that differs from the explanations offered by contractarians, although its conclusions align closely with their own.

It also raises critical remarks. In what follows, we lay out two points of concern. The first pertains to a genealogical explanation of the birth of the state and its accompanying functions. The second question focuses on the principles underpinning and steering the project.

First, in application of his genealogical method, Pettit is led in several parts to differ with contractarians' explanations of how the modern state is brought into existence, to then arrive at conclusions that they would be happy to subscribe. However, it matters just how one reaches a conclusion. This divergence on methods and the broad agreement on the upshots requires closer examination. For the genealogical method, coupled with its Hartian inspirations, raises doubts as to whether Pettit's use of this particular form of explanation warrants the function he expects the state to perform. Let us remember that the state is committed to the pursuit of justice and that to do this it must make sure that there is a balance of power enjoyed by individuals. The trick is that those functions are the result of a spontaneous social evolution akin to the kind that Hart claims accounts for how legal systems emerge.

But there is a circle to be squared here. For Hart is faithful to a descriptivist project and quite aware that legal positivism of the kind that such commitment entails is compatible with the existence of legal systems comprising norms and rules of the most varied moral content. Some may be committed to justice, some may not. As he famously put it, a legal system may treat individuals as sheep, and the sheep may end up in the slaughterhouse, but this is no reason not to call it a legal system (2012, p. 117). However, unlike Hart, Pettit trusts that the nomothetic state will spring and evolve behind the backs of individuals, without them wondering, in the contractarian fashion, whether they have consented to it, and that at some point in its evolution, starting from basic reciprocal expectations to social norms, to the legal system, to the state, a normative function (justice and balance of power) will have, in the process, become a constitutive part of the polity.

But when and why? It is worth stressing that there are at least two alternative narratives about the birth of the state that rely on premises similar to Pettit's, but which arrive at conclusions and institutions rather different from the nomothetic polity which he thinks that the method should lead us to. Rousseau, for example, also believed that the state of nature was indeed inhabited by individuals enjoying similar shares of power. However, their freedom, language, reason, and perfectibility, led them to consent to regimes of property rights which, in the absence of egalitarian social contracts of the kind he champions, led to oppressive political systems (1987). Similar premises to those of Pettit, different conclusions. Or think of another narrative, this time a utilitarian one. Consider Bentham, who in an attempt to rid political philosophy from metaphors and abstractions, asked

us to avoid the usage of abstract terms that would impede us from effectively improving our moral science and our institutions ([1756] 1988; [1789] 2007). And the state is perhaps the first abstraction to be challenged, for it is one in whose name you are sent to jail and obliged to pay taxes. More contemporary libertarians picked up that gauntlet and, while insisting on understanding our political institutions as the result of evolutive processes, they invite us to reject the state as a form of political organisation committed to protecting and furthering freedom. And so, Hayek tends to eliminate the term from his vocabulary to use 'government' in its stead (Kukathas 2015, p. 284). And that change is no mere wordplay, for it leads us to think that from similar evolutionary explanations, we reach diametrically opposite conclusions to those of Pettit. The question for Pettit is, then, what guarantees are there that the genealogy will culminate in the nomothetic state instead of leading, in a Rousseauian vein, to oppression or, in a Hayekian vein, to a minimal state one can only accept begrudgingly? Contractarianism offers a plausible answer: at some point in this story individuals have consented to whatever regime they happened to choose, and it is in their power to create or to change the normative framework under which they live. Alas, by presenting his account as one at odds with contractarianism, Pettit bars his own access to these types of reasons.

This leads us to a second related concern about the principles guiding the nomothetic state. Given that its function and its concept are interrelated, understanding the former is central for understanding the latter. Now, and again, throughout the book as well as in his previous work (e.g., 2012, 2014), Pettit supports the concept of a functional liberal state where citizens enjoy security both among themselves and in relation to officials (p. 113). However, is this primarily a demand of justice, or a demand of legitimacy? Perhaps both? The evolutionist narrative described above is explicitly framed as a justice-related one, and Pettit mentions that a more comprehensive understanding of how this works will be provided in a second book, one his readers are undoubtedly eager for. Yet if justice is what drives the project, we are then entitled to ask what role legitimacy plays in the whole scheme. In Pettit's previous work legitimacy consistently held normative and logical precedence over justice. And so, one becomes puzzled. For even if it was indeed the case that there is a moment in the evolution where facts give rise to norms, and that such norms indeed are expressive of republican justice, which in turn underpin the workings of a nomothetic state, the fact that such processes happen 'behind people's back' (p. 318) makes us wonder whether there are any content-independent (i.e., legitimacy-related) reasons for accepting the authority of the state. But such reasons are conspicuously absent in *The State*. This is especially relevant considering that Pettit accepts that the nomothetic state is not in and of itself the full incarnation of justice. If legitimacy has thus far taken the back seat in the story told in this first volume, it remains unclear what reasons would warrant our acceptance of the nomothetic state as a necessary but insufficient condition for justice, and what sort of reasons we would have for accepting whatever principles, norms, and institutions that would give flesh to the skeletal nomothetic model *The State* presents us with. Reasons, that is, for portraying the authority of the state as legitimate, as just as it may be.

References

Ankersmit, Frank R. 2007. Political representation and political experience: An essay on political psychology. *Rediscriptions* 11: 21–44.

Bentham, Jeremy. [1756] 1988. *A fragment on government.* Ed. J. H. Burns and H. L. A. Hart. Cambridge: Cambridge University Press.

Bentham, Jeremy. [1789] 2007. *Introduction to the principles of morals and legislation.* New York: Dover.

Foucault, Michel. 2005. Truth and power: An interview with Alessandro Fontana and Pasquale Pasquino. In *Three Foucault's major works*, ed. Clare O'Farrell, 109–133. London: Sage.

Hart, H. L. A. 2012. *The concept of law.* Third. Oxford: Clarendon Press.

Herzog, Don. 2020. *Sovereignty RIP*. New Haven, CT: Yale University Press.

Hobbes, Thomas. [1651] 1991. *Leviathan or the matter, forme and power of a Common Wealth ecclesiastical and civil.* Cambridge: Cambridge University Press.

Kukathas, Chandran. 2015. Hayek and the state. In *Law, liberty and state: Oakeshott, Hayek and Schmitt on the rule of law*, ed. David Dyzenhaus and Thomas Poole, 281–294. Cambridge: Cambridge University Press.

Nozick, Robert. 1974. *Anarchy, state and utopia*. New York: Basic Books.

Pettit, Philip. 2014. *Just freedom: A moral compass for a complex world*. New York: W.W. Norton & Company.

Pettit, Philip. 2012. *On the people's terms. A republican theory and model of democracy.* Cambridge: Cambridge University Press.

Rousseau, Jean-Jacques. 1987. Discourse on the origin and foundations of inequality among men. In *Basic political writings*, ed. and transl. Donald Cress, 25–110. Indianapolis: Hackett Publishing.

van Creveld, Martin. 2009. *The rise and decline of the state*. Cambridge: Cambridge University Press.